

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

TRICORE, INC.,  
Plaintiff,

v.

SAFECO INSURANCE COMPANY OF  
AMERICA, and R.P. IANNUCCILLO &  
SONS CONSTRUCTION CO.,  
Defendants.

CIVIL ACTION NO. 04-12393MLW

PLAINTIFF TRICORE, INC.'S ANSWER TO COUNTERCLAIM BY  
DEFENDANT R.P. IANNUCCILLO & SONS CONSTRUCTION CO.

1. Tricore denies the allegations contained in Paragraph One of Defendant Iannuccillo's Counterclaim.
2. Tricore admits the allegations contained in Paragraph Two of Defendant Iannuccillo's Counterclaim.
3. Tricore denies the allegations contained in Paragraph Three of Defendant Iannuccillo's Counterclaim since the Defendant failed to attach Exhibit 1 to the copy of the answer served upon Tricore.
4. Tricore denies the allegations contained in Paragraph Four of Defendant Iannuccillo's Counterclaim.
5. Tricore denies the allegations contained in Paragraph Five of Defendant Iannuccillo's Counterclaim.
6. Tricore denies the allegations contained in Paragraph Six of Defendant Iannuccillo's Counterclaim.
7. Tricore denies the allegations contained in Paragraph Seven of Defendant Iannuccillo's Counterclaim.
8. Tricore denies the allegations contained in Paragraph Eight of Defendant Iannuccillo's Counterclaim.
9. Tricore denies the allegations contained in Paragraph Nine of Defendant Iannuccillo's Counterclaim.

**COUNT I – Breach of Contract (Tricore)**

10. Tricore incorporates the answers set forth in the preceding paragraphs as if fully set forth herein.
11. Tricore denies the allegations contained in Paragraph Eleven of Defendant Iannuccillo's Counterclaim.
12. Tricore denies the allegations contained in Paragraph Twelve of Defendant Iannuccillo's Counterclaim.

**COUNT II –Quantum Meruit (Tricore)**

13. Tricore incorporates the answers set forth in the preceding paragraphs as if fully set forth herein.
14. Tricore denies the allegations contained in Paragraph Fourteen of Defendant Iannuccillo's Counterclaim.
15. Tricore denies the allegations contained in Paragraph Fifteen of Defendant Iannuccillo's Counterclaim.

**COUNT III – Violation of M.G.L. c.93A (Tricore)**

16. Tricore incorporates the answers set forth in the preceding paragraphs as if fully set forth herein.
17. Tricore denies the allegations contained in Paragraph Seventeen of Defendant Iannuccillo's Counterclaim.
18. Tricore denies the allegations contained in Paragraph Eighteen of Defendant Iannuccillo's Counterclaim.
19. Tricore denies the allegations contained in Paragraph Nineteen of Defendant Iannuccillo's Counterclaim.
20. Tricore denies the allegations contained in Paragraph Twenty of Defendant Iannuccillo's Counterclaim.

**COUNT IV – Payment Bond Claim (Safeco)**

21. Tricore incorporates the answers set forth in the preceding paragraphs as if fully set forth herein.
22. Tricore says that Paragraph Twenty-two of the Counterclaim sets forth no allegations against Tricore and, therefore, no response is required.
23. Tricore says that Paragraph Twenty-three of the Counterclaim sets forth no allegations against Tricore and, therefore, no response is required.

**COUNT V – Violation of M.G.L. c.93A and 176D (Safeco)**

24. Tricore incorporates the answers set forth in the preceding paragraphs as if fully set forth herein.
25. Tricore says that Paragraph Twenty-five of the Counterclaim sets forth no allegations against Tricore and, therefore, no response is required.
26. Tricore says that Paragraph Twenty-six of the Counterclaim sets forth no allegations against Tricore and, therefore, no response is required.
27. Tricore says that Paragraph Twenty-seven of the Counterclaim sets forth no allegations against Tricore and, therefore, no response is required.
28. Tricore says that Paragraph Twenty-eight of the Counterclaim sets forth no allegations against Tricore and, therefore, no response is required.

**First Affirmative Defense**

The Counterclaim fails to state a claim upon which relief can be granted and should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

**Second Affirmative Defense**

Defendant Iannuccillo's claims are barred by the doctrine of estoppel.

**Third Affirmative Defense**

Defendant Iannuccillo's claims are barred by the doctrine of waiver.

**Fourth Affirmative Defense**

Tricore states that they were justified in their conduct and acts and are, therefore, not liable to Defendant Iannuccillo as alleged in the Counterclaim.

**Fifth Affirmative Defense**

Defendant Iannuccillo's claims are barred by the doctrine of laches

**Sixth Affirmative Defense**

Defendant Iannuccillo's claims are barred by the doctrine of unclean hands.

**Seventh Affirmative Defense**

Tricore states that Defendant Iannuccillo has suffered no damages as a result of any act or omission on the part of Tricore.

**Eighth Affirmative Defense**

Tricore states that if they failed to perform any of its obligations referred to in Defendant Iannuccillo's Counterclaim, they were excused from the performance of such obligations.

**Ninth Affirmative Defense**

Tricore states that they were ready and willing to perform all of the covenants required to be performed on their part by the agreement or contract referred to in the Counterclaim, but were obstructed and prevented from doing so by Defendant Iannuccillo.

**Tenth Affirmative Defense**

Defendant Iannuccillo's claims are barred by their own breach of contract.

**Eleventh Affirmative Defense**

Tricore states that if any monies are currently due and owing to Defendant Iannuccillo, said amount is reduced under the doctrine of setoff and recoupment to zero and, therefore, Defendant Iannuccillo is owed nothing.

**Twelfth Affirmative Defense**

Tricore states that the agreement or contract alleged in Defendant Iannuccillo's counterclaim was terminated, and that therefore Defendant Iannuccillo cannot recover.

**Thirteenth Affirmative Defense**

Defendant Iannuccillo has failed to comply with the terms and conditions of the Subcontract entered into between Tricore and Defendant Iannuccillo, thereby constituting a substantial breach of the agreement wherefore Tricore owes Defendant Iannuccillo nothing.

**Fourteenth Affirmative Defense**

Tricore says that if it failed to perform any of its obligations referred to in Defendant Iannuccillo's Counterclaim, it was excused from the performance of such obligations.

**Fifteenth Affirmative Defense**

Tricore says that if Defendant Iannuccillo has suffered any damages, said damages were not the result of any violation of Massachusetts General Laws, Chapter 93A by Tricore.

**Sixteenth Affirmative Defense**

Tricore states that if there was a violation of Chapter 93A (allegations which Tricore in no way admits but rather specifically denies), said violation was in no way committed willfully, knowingly or intentionally.

Tricore, Inc.,  
By its Attorneys,

Dated: January 27, 2005

/s/ Edward D. Kutchin  
Edward D. Kutchin, Esquire  
BBO No. 281920  
Kerry R. Northup, Esquire  
BBO No. 633016  
Kutchin & Rufo, P.C.  
155 Federal Street  
Boston, MA 02110  
(617) 542-3000

**CERTIFICATE OF SERVICE**

I hereby certify that I have served the within document, by mailing a copy thereof, postage prepaid, to David M. Campbell, Esq., Visconti & Boren, Ltd., 55 Dorrance Street, Providence, RI 02903 and to Bradford R. Carver, Esq., Cetrulo & Capone LLP, Two Seaport Lane, Boston, MA 02110.

Dated: January 27, 2005

/s/ Kerry R. Northup  
Kerry R. Northup

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